
By: **Delegate Hubbard**

Introduced and read first time: February 4, 2004

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Board of Professional Counselors and Therapists - Hearings - Penalties**

3 FOR the purpose of increasing the statute of limitations for the prosecution of certain
4 offenses; adding to the grounds of discipline; giving the Board the authority to
5 impose a monetary penalty on licensees or certificate holders; allowing the
6 Board to delegate authority to conduct a disciplinary hearing to a certain
7 number of Board members; prohibiting a stay pending judicial review; allowing
8 the Board to make certain appeals; adding certain injunctive actions;
9 establishing procedures for certain injunctive actions; increasing the penalty
10 provisions; and generally relating to the Board of Professional Counselors,
11 hearings, and penalties.

12 BY repealing and reenacting, without amendments,
13 Article - Courts and Judicial Proceedings
14 Section 5-106(a)
15 Annotated Code of Maryland
16 (2002 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 5-106(y)
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2003 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Health Occupations
24 Section 17-313 through 17-315 and 17-402
25 Annotated Code of Maryland
26 (2000 Replacement Volume and 2003 Supplement)

27 BY adding to
28 Article - Health Occupations
29 Section 17-313.1 and 17-315.1

1 Annotated Code of Maryland
2 (2000 Replacement Volume and 2003 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article - Courts and Judicial Proceedings**

6 5-106.

7 (a) Except as provided by this section, a prosecution for a misdemeanor shall
8 be instituted within 1 year after the offense was committed.

9 (y) A prosecution for a misdemeanor offense under Title 9 AND TITLE 17 of the
10 Health Occupations Article shall be instituted within 3 years after the offense was
11 committed.

12 **Article - Health Occupations**

13 17-313.

14 Subject to the hearing provisions of § 17-314 of this subtitle, the Board, on the
15 affirmative vote of a majority of its members then serving, may deny a certificate to
16 any applicant, place any certificate holder on probation, reprimand any certificate
17 holder, or suspend or revoke a certificate of any certificate holder if the applicant or
18 certificate holder:

19 (1) Fraudulently or deceptively obtains or attempts to obtain a
20 certificate for the applicant or certificate holder or for another;

21 (2) Is addicted to any narcotic or is habitually intoxicated;

22 (3) Aids or abets an unauthorized person in practicing professional
23 counseling or representing to be a certified professional counselor;

24 (4) Violates the code of ethics adopted by the Board;

25 (5) Knowingly violates any provision of this title;

26 (6) Is convicted of or pleads guilty or nolo contendere to a felony or a
27 crime involving moral turpitude, whether or not any appeal or other proceeding is
28 pending to have the conviction or plea set aside;

29 (7) Is professionally, physically, or mentally incompetent;

30 (8) Submits a false statement to collect a fee;

31 (9) Violates any rule or regulation adopted by the Board;

1 (10) Is disciplined by a licensing or disciplinary authority of any other
2 state or country or convicted or disciplined by a court of any state or country for an act
3 that would be grounds for disciplinary action under the Board's disciplinary statutes;
4 [or]

5 (11) Refuses, withholds from, denies, or discriminates against an
6 individual with regard to the provision of professional services for which the
7 certificate holder is certified and qualified to render because the individual is HIV
8 positive;

9 (12) COMMITS AN ACT OF IMMORAL OR UNPROFESSIONAL CONDUCT IN
10 THE PRACTICE OF PROFESSIONAL COUNSELING, ALCOHOL AND DRUG COUNSELING,
11 OR MARRIAGE AND FAMILY THERAPY; OR

12 (13) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED
13 BY THE BOARD.

14 17-313.1.

15 (A) IF AFTER A HEARING UNDER § 17-314 OF THIS SUBTITLE THE BOARD
16 FINDS THAT THERE ARE GROUNDS UNDER § 17-313 OF THIS SUBTITLE TO PLACE ANY
17 CERTIFICATE HOLDER ON PROBATION, REPRIMAND ANY CERTIFICATE HOLDER, OR
18 SUSPEND OR REVOKE A LICENSE OR CERTIFICATE, THE BOARD MAY IMPOSE A
19 PENALTY NOT EXCEEDING \$ 5,000:

20 (1) INSTEAD OF PLACING THE LICENSEE OR CERTIFICATE HOLDER ON
21 PROBATION, REPRIMANDING THE LICENSEE OR CERTIFICATE HOLDER, OR
22 SUSPENDING OR REVOKING THE LICENSE OR CERTIFICATE; OR

23 (2) IN ADDITION TO PLACING THE LICENSEE OR CERTIFICATE HOLDER
24 ON PROBATION, REPRIMANDING THE LICENSEE OR CERTIFICATE HOLDER, OR
25 SUSPENDING OR REVOKING THE LICENSE OR CERTIFICATE.

26 (B) THE BOARD SHALL ADOPT REGULATIONS TO SET STANDARDS FOR THE
27 IMPOSITION OF PENALTIES UNDER THIS SECTION.

28 (C) THE BOARD SHALL PAY ANY MONEY COLLECTED UNDER THIS SECTION
29 INTO THE GENERAL FUND OF THE STATE.

30 17-314.

31 (a) Except as otherwise provided in Title 10, Subtitle 2 of the State
32 Government Article, before the Board takes any action under § 17-313 of this subtitle,
33 it shall give the individual against whom the action is contemplated an opportunity
34 for a hearing before the Board.

35 (b) The Board shall give notice and hold the hearing in accordance with Title
36 10, Subtitle 2 of the State Government Article.

1 (c) The hearing notice to be given to the individual shall be served personally
2 or by registered mail to the last known address of the individual at least 30 days
3 before the hearing.

4 (d) The individual may be represented at the hearing by counsel.

5 (E) (1) IN ADDITION TO ANY DELEGATION OF AUTHORITY PROVIDED IN §
6 10-205 OF THE STATE GOVERNMENT ARTICLE, THE CHAIRPERSON OF THE BOARD
7 MAY DELEGATE AUTHORITY TO CONDUCT A HEARING TO A COMMITTEE CONSISTING
8 OF THREE OR MORE BOARD MEMBERS.

9 (2) THE COMMITTEE SHALL:

10 (I) HOLD AN EVIDENTIARY HEARING; AND

11 (II) PREPARE A RECOMMENDATION FOR CONSIDERATION BY A
12 MAJORITY OF THE BOARD MEMBERS THEN SERVING, WHO MAY INCLUDE MEMBERS
13 OF THE COMMITTEE.

14 (3) THE COMMITTEE SHALL GIVE TO EACH PARTY NOTICE OF THE
15 OPPORTUNITY TO FILE EXCEPTIONS AND PRESENT ARGUMENT TO THE BOARD
16 REGARDING THE DECISION OF THE COMMITTEE.

17 [(e)] (F) (1) Over the signature of an officer or the administrator of the
18 Board, the Board may issue subpoenas and administer oaths in connection with any
19 investigation under this title and any hearings or proceedings before it.

20 (2) If, without lawful excuse, a person disobeys a subpoena from the
21 Board or an order by the Board to take an oath or to testify or answer a question,
22 then, on petition of the Board, a court of competent jurisdiction may punish the
23 person as for contempt of court.

24 [(f)] (G) If after due notice the individual against whom the action is
25 contemplated fails or refuses to appear, the Board may hear and determine the
26 matter.

27 17-315.

28 (a) Except as provided in this section for an action under § 17-313 of this
29 subtitle, any person aggrieved by a final decision of the Board in a contested case, as
30 defined in § 10-201 of the State Government Article, may:

31 (1) Appeal that decision to the Board of Review; and

32 (2) Then take any further appeal allowed by Title 10, Subtitle 2 of the
33 State Government Article.

34 (b) Any person aggrieved by a final decision of the Board under § 17-313 of
35 this subtitle:

36 (1) May not appeal to the Board of Review; but

1 (2) May take a direct judicial appeal as provided in Title 10, Subtitle 2 of
2 the State Government Article.

3 (C) AN ORDER OF THE BOARD MAY NOT BE STAYED PENDING JUDICIAL
4 REVIEW.

5 (D) THE BOARD MAY APPEAL FROM ANY DECISION THAT REVERSES OR
6 MODIFIES ITS ORDER.

7 17-315.1.

8 (A) AN ACTION MAY BE MAINTAINED IN THE NAME OF THE STATE OR THE
9 BOARD TO ENJOIN:

10 (1) THE UNAUTHORIZED PRACTICE OF PROFESSIONAL COUNSELING
11 AND CLINICAL PROFESSIONAL COUNSELING, ALCOHOL AND DRUG COUNSELING AND
12 CLINICAL ALCOHOL AND DRUG COUNSELING, OR MARRIAGE AND FAMILY THERAPY
13 AND CLINICAL MARRIAGE AND FAMILY THERAPY; OR

14 (2) CONDUCT THAT IS A GROUND FOR DISCIPLINARY ACTION UNDER §
15 17-313 OF THIS SUBTITLE.

16 (B) AN ACTION UNDER THIS SECTION MAY BE BROUGHT BY:

17 (1) THE BOARD, IN ITS OWN NAME;

18 (2) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR

19 (3) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.

20 (C) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT IN THE COUNTY
21 WHERE THE DEFENDANT:

22 (1) RESIDES; OR

23 (2) ENGAGES IN THE ACTS SOUGHT TO BE ENJOINED.

24 (D) PROOF OF ACTUAL DAMAGE OR THAT ANY PERSON WILL SUSTAIN ANY
25 DAMAGE IF AN INJUNCTION IS NOT GRANTED IS NOT REQUIRED FOR AN ACTION
26 UNDER THIS SECTION.

27 (E) AN ACTION UNDER THIS SECTION IS IN ADDITION TO AND NOT INSTEAD
28 OF CRIMINAL PROSECUTION FOR THE UNAUTHORIZED PRACTICE OF PROFESSIONAL
29 COUNSELING AND CLINICAL PROFESSIONAL COUNSELING, ALCOHOL AND DRUG
30 COUNSELING AND CLINICAL ALCOHOL AND DRUG COUNSELING, OR MARRIAGE AND
31 FAMILY THERAPY AND CLINICAL MARRIAGE AND FAMILY THERAPY UNDER
32 §§ 17-3A-11 AND 17-401 OF THIS TITLE OR DISCIPLINARY ACTION UNDER § 17-313 OF
33 THIS SUBTITLE.

1 17-402.

2 (a) Any person who violates any provision of § 17-401 of this subtitle is guilty
3 of a misdemeanor and on conviction is subject to a fine not exceeding [\$500] \$5,000 or
4 imprisonment not exceeding [6 months] 3 YEARS or both.

5 (b) Each violation of this section is a separate offense.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2004.